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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1959.

No. 734

BERNARD M. WOLFE and FREDERICK J. DANNENFELSER, individuals and co-partners, doing business under the names and styles "Dutch Paint Company" and "Manning-Mitchell Paint Company," *Petitioners,*

vs.

NATIONAL LEAD COMPANY, a corporation, *Respondent.*

PETITION FOR THE WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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BERNARD M. WOLFE and FREDERICK J. DANNENFELSER, individuals and co-partners, doing business under the names and styles "Dutch Paint Company" and "Manning-Mitchell Paint Company," *Petitioners,*

vs.

NATIONAL LEAD COMPANY, a corporation, *Respondent.*

PETITION FOR THE WRIT OF CERTIORARI
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for the Ninth Circuit

Petitioners pray that the writ of certiorari issue to review a final judgment of the United States Court of Appeals for the Ninth Circuit entered on its Docket No. 16157 on November 27, 1959; and to review an

interlocutory judgment of the United States Court of Appeals for the Ninth Circuit entered on its Docket No. 13737 on May 17, 1955. Petitioners further pray for a reconsideration by this Court of the denial of their petition to review the interlocutory judgment entered May 17, 1955 (October term, 1955, *Wolfe et al., doing business as Dutch Paint Co., etc., v. National Lead Co.*, November 7, 1955, 350 U.S. 883).

CITATIONS TO OPINIONS BELOW

The District Court made no opinion on the merits of the cause. Its findings of fact and conclusions of law (RA. 62-84)[1] are unreported and are reproduced in Appendix A, pages 2-23. The interlocutory opinion of the Court of Appeals is reported in 223 F.2d 195 and is reproduced in Appendix A, pages 26-49. Following remand of the cause pursuant to the interlocutory opinion of the Court of Appeals, the District Court made two opinions; the first (RB. 35-52)[2] is reported at 156 F.Supp. 883 and is reproduced in Appendix A, pages 53-68, and the second (RB. 53-72) is unreported and is reproduced in Appendix A, pages 69-75. The final opinion of the Court of Appeals (RB. 433-440) is reported in 272 F.2d 867 and is reproduced in Appendix A, pages 77-86.

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[1]The record references (RA _____) in this petition refer to the pages of the record on Appeal No. 13,737 before this Court in the October term, 1955, No. 357.

[2]The record references (RB _____) in this petition refer to the pages of the record on Appeal No. 16,157 before this Court on the instant transcript.

JURISDICTION

The final judgment of the Court of Appeals was entered on November 27, 1959 (RB. 441). Jurisdiction of this Court is invoked under U. S. Code, Title 28, Section 1254(1). Jurisdiction of this Court over the interlocutory judgment is based upon *Kellogg Co. v. Nat. Biscuit Co.* (1938) 305 U.S. 111, 115-116; *Smith v. McCullough* (1926) 270 U.S. 456, 461; *Hamilton Shoe Co. v. Wolf Brothers* (1916) 240 U.S. 251, 257-258; *United States v. Denver & R.G.R.R.* (1903) 191 U.S. 84, 93; *Panama Railroad v. Napier Shipping Co.* (1897) 166 U.S. 280, 283-284; and dictum in *Toledo Co. v. Computing Co.* (1923) 261 U.S. 399, 418.

QUESTIONS PRESENTED

1. Does the use of the trade-mark "Dutch Paint" and the trade-name "Dutch Paint Company" constitute infringement of, and unfair competition with, the trade-mark "Dutch Boy"?

2. Can a person be held guilty of fraudulent adoption of a trade-mark and a trade-name when

(a) the trade-mark and trade-name usage were established by his predecessor a number of years before he acquired the business in question;

(b) his attorney had given him an opinion that his conduct was lawful;

(c) the attorney for the claimant had given the claimant an opinion that such use of the trade-mark and trade-name was lawful; and

(d) a United States District Court had held that his conduct was lawful?

STATUTES INVOLVED

Act of February 20, 1905, c. 592, Section 5, 33 Stats. 724, at 726, as amended by the Act of March 2, 1907, c. 2573, 34 Stats. 1251; as amended by the Act of February 18, 1911, c. 113, 36 Stats. 918, at 919, as amended by the Act of January 8, 1913, c. 7, 37 Stats. 649, which provides without substantial change throughout the various amendments of Section 5:

> "* * * no mark which consists * * * merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this Act: * * *."

Act of July 5, 1946, c. 540, Section 49, 60 Stat. 446:

> "Nothing herein [in this chapter] shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947]."

STATEMENT OF THE CASE

Petitioners brought a civil action for declaratory judgment against respondent alleging that they and their predecessors had been engaged in the business of manufacturing and selling paints and paint products since as early as August 1941; that they had employed

the trade name "Dutch Paint Co." and the trade name "Dutch Paint" in conducting their business; and that a controversy arose from certain notices of infringement which respondent sent petitioners charging them with infringement of United States Trademark Registration No. 351,264 issued October 26, 1937 for the trade-mark "Dutch Boy" (R.A. 3-12). Respondent, in a counterclaim, charged petitioners with trade-mark infringement and unfair competition (RA. 15-20).

The trial before the late Hon. Herbert W. Erskine took 25 court days (RA. 62, App. A, 2). The record comprises 2426 printed pages (RA. 88-2513). There were approximately 3,000 pages of typed transcript and approximately 450 exhibits (RA. 2515).

After briefing but before oral argument Judge Erskine passed away (RA. 2514) and the parties by stipulation submitted the cause on the original record for decision by the Hon. Edward P. Murphy (RA. 63, App. A 3). Oral arguments on this record took six court days (RA. 63, App. A 3).

Upon this extensive record and these complete arguments, Judge Murphy granted petitioners the declaratory judgment for which they prayed and dismissed respondent's counterclaim (RA. 84-86, App. A, pages 24-25). This judgment was supported by detailed findings of fact and conclusions of law (RA. 62-84, App. A, 2-23).

Upon review, the Court of Appeals refused to follow the findings of fact of the District Court; made its own fact determinations; reversed the judgment of the

District Court; and remanded the cause to the District Court with directions to dismiss the petitioners' complaint, to grant the respondent an injunction, to proceed to take an accounting of the petitioners' profits, and to determine the respondent's damages (RA. 2533-2548, App. A 26-47; RB. 29-31, App. A 47-49).

After having ordered an accounting, the District Court entered judgment in favor of respondent and against petitioners in the sum of $239,457.86 (RB. 72-73, App. A, 76) representing profits in the sum of $178,657.86 and attorneys' fees in the sum of $60,800 (RB. 59-60, App. A, 74-75). The Court of Appeals affirmed (RB. 441, App. A, 87).

This petition seeks review of the final judgment of the Court of Appeals as well as the interlocutory proceedings leading up to the entry of judgment.

REASONS FOR GRANTING THE WRIT

Preliminary Facts

Petitioners on May 10, 1946, bought the Dutch Paint Company, a small paint factory in San Francisco. At the time of this purchase, Dutch Paint Company was producing and selling products under the "Dutch" label (RA. 65, Finding 10, App. A, 5-6). The predecessor company was an established business at the time petitioners acquired it. It had been in existence since March of 1941 (RA. 495). It registered in the San Francisco Recorder, a local legal paper, as the Dutch

Paint Company in July of 1941 (RA. 495). It advertised continuously in both the alphabetic and classified sections of the San Francisco Telephone Directory commencing with the August, 1941 issue (RA. 961-964). When petitioners bought this business, it was producing about 100 gallons of "Dutch" paint a day (RA. 483) and it had a number of established customers (RA. 479-480, 628-631).

Petitioners continued the "Dutch" paint line which they acquired until prohibited from so doing by the order of the Court of Appeals (RB. 212). Petitioners' sales in Dutch Paint and their profits as determined by the District Court are as follows (RB. 60-72):

Year Ending	Gross Sales	Profit
April 30, 1947	$126,743.00	*$30,437.28*[3]
April 30, 1948	245,830.00	*6,639.66*
April 30, 1949	431,625.00	40,217.05
April 30, 1950	515,323.00	44,867.20
April 30, 1951	549,621.21	69,765.35
April 30, 1952	363,167.12	12,853.98
April 30, 1953	292,501.30	10,954.28
April 30, 1954	180,540.75	*1,258.10*
April 30, 1955	181,663.37	*2,138.50*
April 30, 1956	51,144.08	*28,547.11*
Totals	$2,937,558.83	$109,637.21

The record discloses and the District Court and the Court of Appeals both found that respondent had used a "Dutch Boy" trade-mark long prior to petitioners' commencement in the business (District Court Find-

[3]The figures in italics represent losses for the years in question.

ings 25-31, App. A, 9-11, Court of Appeals Opinion, Footnote 1, App. A, pp. 28-30).

This Court will note that the only feature common to respondent's trade-mark and to petitioners' terms is the single word "Dutch".

The record discloses that the word "Dutch" had been used in the paint business by many people commencing prior to the first use of "Dutch Boy" by respondent and continuing at least as late as the first use by petitioners and their predecessors of the word "Dutch". The District Court so found (Findings 32-48, App. A, 11-16) and although the Court of Appeals minimized the effect of these uses, the Court of Appeals likewise recognized the proof of many such uses (App. A, 42-44, footnotes 14-15). To save this Court the labor of referring to the voluminous records and exhibits, petitioners have incorporated an abstract of the record with respect to these usages as Appendix B to this petition.

The record further discloses and this Court can take judicial notice of the fact that the word "Dutch" was frequently used in a descriptive and geographical sense at least as late as 1941 when petitioners' predecessor adopted the trade name "Dutch Paint Company" and offered its products for sale. On this issue the District Court and the Court of Appeals were in accord (District Court Findings 43-46, App. A, 14-15, Court of Appeals Opinion, App. A, 34). For the convenience of the Court the dictionary definitions taken from Webster's New International Dictionary, Second

Edition, copyrighted 1941, are set forth in Appendix C attached to this petition.

This Court can also take judicial notice that the Netherlands have been substantial producers of paint products and that genuine "Dutch" paint products have been imported into this country at all times from at least as early as 1902 until the present date with the exception of six months during World War I and with the exception of a few years during World War II. This appears from official statistics of the Department of Commerce which show that during the period commencing 1902 and ending 1958 a total of more than $23,000,000 of paint products have been imported into the United States from the Netherlands. For the convenience of the Court a tabulation of the statistics taken from the pertinent official government reports is appended to this petition as Appendix D.

This case is unique in judicial annals. It is the first and only reported decision known to counsel in which a composite trade-mark including a descriptive or geographic word commonly used in the trade and unprotectable *per se* has been held to grant a monopoly over the otherwise unprotectable word *per se*. When validity of a mark depends on its difference from the common property of the trade, that difference should not be ignored in adjudicating infringement and unfair competition.

Specific reasons for granting the writ

I. In granting respondent a trademark and trade name monopoly over the word "Dutch", the interloc-

utory decision of the Court of Appeals is in conflict with *Columbia Mill Company v. Alcorn* (1893) 150 U.S. 460.

First, the record discloses and the District Court found that when respondent first adopted the "Dutch Boy" mark in 1907 for white lead that the word "Dutch" had already been appropriated by others in the paint field in connection with the sale of competitive products (Findings 32 and 34; App. A, 11-12). By the time that respondent later expanded its use of the trademark "Dutch Boy" to prepared paints, the word "Dutch" had been adopted by a number of additional competitive businesses. The Court of Appeals did not find any of these findings clearly erroneous.

Since the word "Dutch" had already been appropriated by the trade at the time respondent first employed it, the decision of the Court of Appeals is in square conflict with *Columbia Mill Company v. Alcorn* (1893) 150 U.S. 460. There the Court pointed out, page 464:

> "* * * The word 'Columbia' having been thus previously appropriated and used on barrels and sacks of flour, was not subject to exclusive appropriation thereafter by the complainant, so as to make it a valid trademark such as the law will recognize and protect."

At page 463, the Court adopted *Corbin v. Gould* (1890) 133 U.S. 308. In that case this Court considered a composite mark comprising the word "Tycoon" and a diamond shaped border. The word "Tycoon," like the word "Dutch", had been used in the trade,

but the composite mark had not been used. At page 314, this Court said:

> "* * * It (the word "Tycoon") belonged to the public, as the common property of the trade, and, therefore was not subject to appropriation by any one person."

Second, the word "Dutch" is incapable of exclusive appropriation by anyone. It is geographical of the Netherlands. It is descriptive of imports from the Netherlands. It is descriptive of various processes and colorings commonly used in the paint field. It has been in constant use by others to a greater or lesser extent in the paint field prior to respondent's adoption of "Dutch Boy" and continuously thereafter up to and including the denial of the original petition for certiorari in this case.

In *Columbia Mill Company v. Alcorn* (1893) 150 U.S. 460, this Court held, page 464:

> "Second. The word 'Columbia' is not the subject of exclusive appropriation under the general rule that the word or words, in common use as designating locality, or section of a country, cannot be appropriated by anyone as his exclusive trademark."

In a somewhat related sense, this Court in *Standard Paint Co. v. Trinidad Asp' Co.* (1911) 220 U.S. 446, struck down a trademark for the descriptive word "Rubberoid". At page 453, this Court quoted the opinion of the Court of Appeals, which said:

> "A public right in rubberoid and a private monopoly of rubberoid cannot coexist."

Similarly, it is submitted that a public right in "Dutch" and a private monopoly of "Dutch" cannot coexist.

The rule of *Columbia Mill Company* was promulgated into statute by the Act of February 20, 1905 (quoted this petition, page 4) which was in effect when petitioners' predecessors first began to use the expressions "Dutch Paint Company" and "Dutch Paint".

Petitioners submit that this square conflict on two independently supportable grounds between the decision of the Court of Appeals and the decision of this Court in *Columbia Mill Company* should be resolved by the grant of the petition.

2. In granting the respondent unfair competition relief because of petitioners' use of "Dutch Paint" and "Dutch Paint Company" the interlocutory decision of the Court of Appeals is in conflict with *Standard Paint Co. v. Trinidad Asph. Co.* (1911) 220 U.S. 446.

We have shown above that the word "Dutch" is not entitled to technical trademark protection because respondent was not the first appropriator of the term and because the term is both geographical and descriptive. Nonetheless the Court of Appeals awarded the respondent injunctive relief and an accounting based upon the theory of unfair competition.

This Court held that such a result was improper in *Standard Paint Co. v. Trinidad Asph. Co.* (1911) 220 U.S. 446. The Court considered "Ruberoid" versus

"RubberO". After first holding that the words were descriptive and thus incapable of being a valid trademark, this Court turned to the unfair competition aspects and held that there was no unfair competition. At page 461 this Court stated:

> "* * * The only imitation by the Asphalt Company of the roofing of the Paint Company is that which exists in the use of the word 'rubbero,' and this only by its asserted resemblance to the word 'ruberoid'. To preclude its use because of such resemblance would be to give to the word 'ruberoid' the full effect of a trade-mark, while denying its validity as such. It is true that the manufacturer of particular goods is entitled to protection of the reputation they have acquired against unfair dealing, whether there be a technical trademark or not, but the essence of such a wrong consists in the sale of the goods of one manufacturer or vendor for those of another. *Elgin National Watch Co. v. Illinois Watch Co., supra.* Such a wrong is not established against the Asphalt Company. It does not use the word 'rubbero' in such a way as to amount to a fraud on the public."

Similarly in the case at bar the only similarity between the petitioners' labels and the respondent's labels is that which exists in the use of the word "Dutch". To preclude its use because of such resemblance is to give the word "Dutch" the full effect of a trademark, while denying its validity as such.

This square conflict between the decision of the Court of Appeals in granting unfair competition relief with respect to the geographical and descriptive word "Dutch" and the decision of this Court in deny-

ing unfair competition relief with respect to the descriptive word "RubberO" should be resolved by the granting of the petition.

3. In awarding respondent an accounting of petitioners' profits and in assessing profits and attorneys' fees against petitioners, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

The Court of Appeals in its interlocutory opinion justified the award of profits by its determination that "there was a deliberate and intentional design to cause confusion and mistake and to deceive purchasers" (Appendix A, p. 46). In its judgment on the mandate the District Court recited specifically that petitioners were "guilty of fraudulent conduct" (Appendix A, p. 50).

The District Court entered a final judgment against petitioners for their profits in the amount of $178,657.86 and attorneys' fees in the amount of $60,800.00. None but the very wealthy could face such a judgment without bankruptcy.

The undisputed facts in this record preclude such a conclusion and demonstrate that respondent has been given a windfall to petitioners' detriment and that petitioners have been and are being deprived of their property without due process of law.

The record discloses without controversy that the business which petitioners acquired in May, 1946 was

a going concern which had used the trade name "Dutch Paint Co." continuously since August, 1941 (Findings 10-11, Appendix A, pp. 5-6). When petitioners bought this business, it was producing a complete line of "Dutch Paint" (Finding 13, Appendix A, p. 6).

In the early spring of 1948 petitioners consulted James Naylor, an attorney in San Francisco with a good reputation for competence and integrity, and asked Mr. Naylor whether petitioners had a right to use the "Dutch" label and the name "Dutch Paint Co." Mr. Naylor advised petitioners that they had every right to use the Dutch name, the Dutch label and the Dutch Paint Co. as a trade style (RB. 257-258).

Although it was unknown to petitioners at the time, Mr. Naylor's opinion was and is confirmed by respondent's upper level interoffice memorandum from its patent department manager to its Pacific Coast manager in which it was stated (Exhibit 151, RA. 806-807):

> "* * * we have no proprietary legal exclusive right to the word 'Dutch' in connection with paint and paint products. 'Dutch' is a geographical name, and as such, it is not registrable as a trademark, but if used exclusively, it may acquire secondary trademark significance. However, our mark is 'DUTCH BOY' and we can only enforce that mark against others under the trademark laws."

Mr. Naylor's opinion and respondent's interoffice memorandum were further confirmed by the District Court in the original judgment entered in this cause on January 2, 1953 (Appendix A, pp. 24-25).

Then, 14 years after the establishment of the business and 9 years after petitioners had acquired the business, the Court of Appeals held that petitioners' conduct was wrongful from the very beginning when it reversed the trial court judgment on May 17, 1955 (Appendix A, pp. 26-47). Thereafter and although petitioners were prosecuting a petition for a writ of certiorari to this Court they changed labels as quickly as they could (RB. 212).

Petitioners submit that when the conduct of a layman is approved by the advice of competent legal counsel and the decision of a federal court, he cannot soundly be deemed guilty of fraudulent conduct. The fact that a Court of Appeals finds that the opinions of both parties to the litigation are erroneous and finds that a District Court is erroneous demonstrates a difference in legal viewpoint, but it most certainly does not follow that the person is fraudulent in his conduct.

In the case at bar it is quite significant that every dollar of profits with which petitioners were charged and for which respondent obtained judgment was made after petitioners had obtained advice of counsel that their conduct was proper.

It is a strange rule of reason which subjects a party to a quarter of a million dollar judgment, which gives him no salary for his own efforts in making sales of almost $3,000,000, and which as a part of the judgment charges him with his opponents' attorneys fees—when his own conduct was deemed legal by his counsel, by his opponents' counsel, and by a District Judge, when

similar conduct was held to be proper by the only analogous decisions of this Court, and when a statute provides that the word in dispute is unprotectable to anyone. A fraudulent intent should not be imputed *ex post facto* on such a record.

Even in malicious prosecution cases, advice of counsel[4] and a favorable decision[5] are held to be conclusive on the issue of good faith and probable cause for questioned conduct. There is no reason or logic why a user of a common trade word should be singled out for different treatment and his property taken away from him by a back breaking judgment.

4. This petition should be granted in the public interest. The mark which respondent adopted is a composite mark covering the unitary thought "Dutch Boy"; the trademark registration granted respondent a prima facie monopoly to that composite mark; and the advertising expenditures and sales of respondent were concerned with that composite mark. Now the

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[4]Advice of counsel has been said to be a defense to actions for malicious prosecution in *ALI, Rest., Torts,* Sec. 666; *Psinakis v. Psinakis* (3rd Cir. 1955) 221 F. 2d 418, 424; *Seaboard Oil Co. v. Cunningham* (5th Cir., 1931) 51 F. 2d 321, 325, cert. den. 284 U.S. 657, 76 L. Ed. 557, 52 S. Ct. 35; and *Cragin v. De Pape* (5th Cir., 1908) 159 Fed. 691, and to claims for attorneys' fees in patent infringement actions; *Artmoore v. Dayless Mfg. Co.* (7th Cir., 1953) 208 F. 2d 1, 6-7, cert. den. 347 U.S. 920, 98 L. Ed. 1075, 74 S. Ct. 518; and *Packwood v. Briggs & Stratton Corp.* (Del. 1951) 90 F. Supp. 803, 808, rev'd on other grounds 195 F. 2d 971, cert. den. 344 U.S. 844, 97 L. Ed. 657, 73 S. Ct. 61. See also *Stewart v. Sonneborn* (1879) 98 U.S. 187.

[5]A favorable decision by the initial fact finder has been held to be an absolute defense to actions for malicious prosecution in cases such as *Sheffield v. Cantwell* (7th Cir., 1938) 101 F. 2d 351, 352; *Engleman v. Progressive Machinery Corporation* (Mass., 1957) 156 F. Supp. 46, 47-48.

Court has deprived the petitioners of the right to use, not that composite mark, but the unprotectable individual element "Dutch" used in that mark.

In *Corbin v. Gould* (1890) 133 U.S. 308, this Court referring to the composite mark comprising the word "Tycoon" and a diamond shaped border, said, page 314:

> "Even conceding that the complainants may claim a trademark for the combination of the diamond and the words inclosed in it, as described in their application to the Patent Office, there was, upon the authorities above cited, clearly no trademark in the word 'Tycoon' considered by itself."

The result here is quite analogous to the efforts of a patentee to extend his monopoly to the individually unprotectable elements of a combination patent. To paraphrase *Mercoid Co. v. Mid-Continent Co.* (1944) 320 U.S. 661, 667:

> —The trademark is for a combination only. Since none of the separate elements of the combination is claimed as the trademark, none of them when dealt with separately is protected by the trademark monopoly. Whether the parts are new or old, the combination is the trademark and it is distinct from any of them. If a limited monopoly over the word "Dutch" were allowed, it would not be a monopoly accorded trademark usage by the trademark laws but a monopoly born of a commercial desire to avoid the rigors of competition fostered by the anti-trust laws. If such an expansion of the trademark monopoly could be effected by decree, the integrity of the trademark system would be seriously compromised.—

Respondent has now extended this monopoly to the public in general. This situation has become manifest through respondent's conduct following denial of the earlier petition for the writ of certiorari in *Wolfe et al., doing business as Dutch Paint Co. etc., v. National Lead Co.* (1955) 350 U.S. 883.

When respondent first questioned petitioners' use of the word "Dutch", it made an investigation of other names containing the word "Dutch" listed in the trademark directory of the National Paint, Varnish and Lacquer Association (RA. 884). It found about thirty, and as of the date of trial about half of the names employing the word "Dutch" were still in use (RA. 884). Respondent held its objections to the various uses of "Dutch" in abeyance until the final outcome on the first appeal (RB. 104). When certiorari was denied, respondent gathered together its files and "took up again" (RB. 104). In this same connection the record discloses that Charles F. Kaegebehn, manager of the patent department of respondent (RA. 695), had counseled respondent's Pacific Coast manager on March 17, 1948 that "* * * you are in a good position by a show of force to discourage continued use of this phrase" (RA. 807, Ex. 151). One need not speculate as to the results of respondent's use of the denial of the writ in this case. Of the approximately fifteen users, substantially all of them agreed to stop using the word "Dutch" (RB. 103).

In this way, respondent has lifted itself by its own boot straps to obtain a virtual trademark monopoly over the word "Dutch". First, it satisfied the Court

of Appeals that there was no connection between the third party users of the word "Dutch" and petitioners' use of the word "Dutch" which would stand in the way of a favorable judgment and decree, and then as soon as the decision of the Court of Appeals had become finalized by the denial of the petition, it successfully obtained agreements of substantially all of the fifteen remaining users of the "Dutch" expression to stop using the word "Dutch".

Respondent's monopoly of the word "Dutch" now operates to the deprivation not only of these petitioners, but of the entire public as well. There is no one left to dispute respondent's monopoly. One would be foolhardy to do so at the risk of sustaining the confiscatory damages and attorneys' fees which have been imposed upon petitioners in this case.

Petitioners submit that the solidification of respondent's unwarranted monopoly over the word "Dutch" after the denial of certiorari in this case cries out for reconsideration of the denial of the original petition in this case, just as it did in *Paramount Corp. v. Tri-Ergon Corp.* (1935) 294 U.S. 464, and *Altoona Theatres v. Tri-Ergon Cor .* (1935) 294 U.S. 477, wherein the petitions were granted (293 U.S. 528) after denial (293 U.S. 587) in part because of respondent's post denial coercive trade activities (see Petitions for Rehearing: No. 254, pp. 2-6; No. 255 and 256, pp. 2-3).

Moreover, in view of the fact that substantially all users of "Dutch" have now stopped using the word "Dutch", a resulting conflict of decisions is improbable, just as it was in such cases as *Schriber Co. v.*

Cleveland Trust Co. (1938) 305 U.S. 47, 50; and *Muncie Gear Co. v. Outboard Co.* (1942) 315 U.S. 759, 765-766.

5. The principal authorities cited by the Court of Appeals do not furnish independent grounds for supporting the judgment.

Hamilton Shoe Company v. Wolf Brothers (1916) 240 U.S. 251 (cited by Court of Appeals, App. A, pages 31-32 and 34) involves a conflict between the words "American Lady" and "The American Girl." The Court, page 257, distinguished but did not overrule *Columbia Mill Co. v. Alcorn* (1893) 150 U.S. 460. In so doing, this Court stated, page 257:

> "* * * If the mark here in controversy were 'American shoes' these cases would be quite in point."

In the case at bar, the mark in controversy is "Dutch" comparable to "Columbia" adjudicated in *Columbia Mill Co.* and to "American shoes" cited by way of example in *Hamilton Shoe Company* and not "Dutch Boy" or "The Dutch Man" comparable to "American Lady" and "The American Girl" adjudicated in *Hamilton Shoe Company.*

Armstrong Co. v. Nu-Enamel Corp. (1938) 305 U.S. 315 (cited by Court of Appeals, App. A, page 35) distinguishes but does not overrule *Standard Paint Co., v. Trinidad Asph. Co.* (1911) 220 U.S. 446 (see 305 U.S. 335, footnote 24). This Court said, page 335:

In so doing the Court said, page 335:

> "* * * Here we have a secondary meaning to the descriptive term, 'Nu-Enamel.' This establishes,

entirely apart from any trademark act, the common law right of the Nu-Enamel Corporation to be free from the competitive use of these words as a trade-mark or trade name.''

In *Armstrong* there was proof of secondary meaning by virtue of defendant's pleading, page 320:

"Defendant admitted 'that the name "Nu-Enamel" has come to mean and is understood to mean, throughout the United States, including the State of Illinois and the City of Chicago, the plaintiff and plaintiff's products only, and the word "Nu-Enamel" is a mark by which the goods of the plaintiff are distinguished from other goods of the same class'; * * *"

In the present case secondary meaning of the word "Dutch" is not admitted; in the present case there is no evidence or proof of secondary meaning; and in the present case there are no findings of fact either by the District Court or the Court of Appeals that "Dutch" does have secondary meaning. If such findings had been made, they would have been clearly erroneous for the reason that respondent was never the exclusive proprietor[6] of the word "Dutch", and for the reason that it introduced no evidence even tending to show secondary meaning in 1941[7] when peti-

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[6]One of the essential elements to establishing secondary meaning of a geographical or descriptive term is proof that the proprietor has had at least some exclusive use of the term. *Ellay Stores, Inc. v. Savitz* (Pa. 1939) 30 F. Supp. 462, 463; *Corning Glass Works v. Pasmantier* (N.Y. 1939) 30 F. Supp. 477, 482. See also U. S. Code, Title 15, Section 1052 (f).

[7]Both on reason and authority the alleged trademark must have acquired a secondary meaning before the petitioners began to manufacture and sell their product. ***Quaker State Oil Refining***

tioners' predecessors adopted and began to promote "Dutch Paint Company" or in 1946, when the petitioners themselves assumed proprietorship of the Dutch Paint Company and Dutch paint labels, or at any other time.[8]

Menendez v. Holt (1888) 128 U.S. 514 (cited by Court of Appeals, App. A, page 40) involves a wholly arbitrary term "La Favorita" used as a brand on flour. This Court upheld the validity and infringement of the trademark as against a former partner of the trademark proprietor. With regard to a single prior public use of the mark, this Court said, page 521:

> "* * * such use was discontinued before Holt & Co. appropriated the words to identify their own flour, and there was no attempt to resume it."

This should be distinguished from the case at bar wherein the public never discontinued to use the word "Dutch" until long after respondent's adoption of "Dutch Boy" and then only under compulsion from respondent. At all times prior to respondent's adoption of "Dutch Boy" and petitioner's acquisition of Dutch Paint and Dutch Paint Company, there have been one or more users of the word "Dutch."

Co. v. Steinberg (1937) 325 Pa. 273 280, 284, 189 Atl. 473, 476, 478; *Upjohn Co. v. William S. Merrell Chemical Co.* (6th Cir. 1920) 269 Fed. 209, 212-213; *Mavco, Inc. v. Hampden Sales Ass'n* (1948) 273 App. Div. 297, 302, 77 NYS 2d 510, 515.

[8] As late as the trial of this cause, Charles F. Kaegebehn, manager of the patent department of respondent (RA. 695) admitted to the District Court,

> "* * * the word 'Dutch,' as far as my understanding goes, hasn't any significance in paint, per se. When one says 'Dutch Paint,' it doesn't mean anything to me, sir." (RA. 861).

United Drug Co. v. Rectanus Co. (1918) 248 U.S. 90 (cited by Court of Appeals, App. A, p. 44, footnote 16) involves competitive uses of the trademark "Rex" in which the respective parties used the mark in different territories. Petitioner entered a territory already occupied by respondent, and complained of confusion. This Court held this to be nonactionable stating, pp. 103-104:

> "* * * Whatever confusion may have arisen from conflicting use of the mark is attributable to petitioner's entry into the field with notice of the situation; and petitioner cannot complain of this."

Similarly in the case at bar, whatever confusion has arisen from the conflicting uses of the marks in question is attributable to respondent's entry into the "Dutch" field with notice of the fact that the public had already occupied the field. Respondent should not complain.

Saxlehner v. Eisner & Mendelson Co. (1900) 179 U.S. 19 (cited by Court of Appeals, App. A, page 45) held that the proprietor of "Hunyadi" for spring water was not entitled to exclusive use of the word because, page 36, it "once became public property". This Court held:

> "* * * The right to individual appropriation once lost is gone forever."

Indeed, in subsequent litigation involving this same mark, this Court in *Saxlehner v. Wagner* (1910) 216 U.S. 375 adhered to its earlier ruling and held that there was no right in the original trademark proprietor to prevent the use of the word on artificial spring

water not coming from the proprietor's wells.[9] On page 381, this Court stated:

> "* * * one is at liberty to refer to a geographical expression to signify the source of one's model. 'Hunyadi' at best is now only a geographical expression in effect."

In the case at bar, the facts are even stronger for petitioners because here respondent never has established even a fleeting "right to individual appropriation" of the "Dutch" name.

Straus v. Notaseme Co. (1916) 240 U.S. 179 (cited by Court of Appeals, App. A, p. 46, footnote 19) does not involve a descriptive or geographical term, but it involves, p. 182, a distinctive "red square with the diagonal black band" which was used both by petitioners and respondent. The petitioners were enjoined from further use of the mark in controversy but, p. 183, "so far as the decree charged them with profits it is reversed." This case, therefore, does not warrant an award of profits for use of a descriptive or geographical term.

In *Champion Plug Co. v. Sanders* (1947) 331 U.S. 125 (cited by Court of Appeals, App. A, p. 47), petitioner rebuilt respondent's "Champion" spark plugs and used respondent's trademark "Champion" on the plugs so repaired. This Court affirmed a decision of

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[9] This case should govern over the view of the Court of Appeals that petitioners' use of the word Dutch is "not claimed to have any relation to any product now or ever made in Holland or any process, color, or other description related to Holland or the Dutch." (App. A, page 34.) See also *French Republic v. Saratoga Vichy Co.* (1903) 191 U.S. 427, 439-441.

the Court of Appeals which denied an accounting, and held that the petitioner was required clearly and distinctly to mark the plugs "repaired" or "used". This case, therefore, does not support the decision here tendered for review.

Mishawaka Mfg. Co. v. Kresge Co. (1942) 316 U.S. 203 (cited by Court of Appeals, App. A, p. 47) involves a trademark consisting of a red circular plug embedded in the center of a heel for shoes. There was no geographical or descriptive significance to the mark, and the mark was held to be properly registered under the Trade-Mark Act of 1905. In the case at bar, "Dutch" would not have been registrable under the Act of 1905, and hence *Mishawaka Mfg. Co.* can furnish no support for the instant decision.

CONCLUSION

For the foregoing reasons, petitioners pray that this petition for the writ of certiorari should be granted.

Dated, San Francisco, California,
February 24, 1960.

Respectfully submitted,
CARL HOPPE,
Attorney for Petitioners.

FRED LEUENBERGER,
Of Counsel for Petitioners.

**(Appendix A is separately bound;
Appendices B, C and D follow)**

Appendix B

In this appendix, petitioners catalog and abstract the record with respect to general usage in the trade of the word "Dutch" in connection with the manufacture and sale of paint products.

"Amsterdam Old Dutch" by Great Lakes Varnish Works, Inc., Chicago, Illinois. This listing appeared in the 1947 trademark directory* for white enamel (Request 21, RA. 103). This concern commencing in approximately June 1939 and continuing to date, employed a label bearing the words "Amsterdam Old Dutch" on white enamel which it manufactures and sells (Request 34(a), RA. 159-160). Exhibit 23 is a photostatic copy of the "Amsterdam Old Dutch" label (Request 34(b), RA. 160). Karla J. Howe, the President and one of the founders of this firm, testified as to this use (RA. 293-302). Exhibit 75 is a label bearing the mark "Amsterdam Old Dutch White Enamel" (RA. 294). This is a label used at the present time (RA. 294). The witness identified invoices dated October 8, 1940, and September 16, 1940 (Exhibits 76, 77, 77A, 77B and 77C, RA. 295-297). This label was first used in the late thirties and prior to February 1940, the date of death of John G. Shilvock, the one who originated this name (RA. 297). This product was generally distributed in the Middle Western states (RA. 298). This label is just one of a

*The trade-mark directories referred to in this summary are published by the Trade Mark Bureau of the National Paint, Oil and Varnish Association. See RA. 177-204.

good many products that this firm sells (RA. 299). This firm is a customer of respondent, and Charles F. Kaegebehn, manager of respondent's patent department (RA. 695) had no reports of confusion as to the use of this label (RA. 734). This notation is listed in the 1947 trademark directory (RA. 894).

"Dutch" and **"Dutch Paint Co."** by North Jersey Paint Co., Inc., Passaic, New Jersey. Commencing in about the year 1930 and continuing until a date subsequent to June 30, 1949, this firm employed a label bearing the trade style "Dutch Paint Co." and the word "Dutch" on paints manufactured and sold by it (Request 40(a), RA. 167-168). Exhibit 34 is a photostatic copy of a label employed by this concern (RA. 169). Subsequent to June 30, 1949, respondent protested to this user by a notice of infringement (Request 40(c), RA. 169). No reports of confusion were brought to respondent's attention (RA. 738-740). Charles F. Kaegebehn suggested to this firm that this sort of thing was an infringement of our "Dutch Boy" trademark (RA. 742). This firm said it had no desire to continue the label but the matter was in status quo (RA. 743-744). Mr. Kaegebehn learned of this use about the time of the institution of the present action (RA. 855-856). This firm had some dealers in Brooklyn, the Bronx and Bergen County, New Jersey (RA. 858). This firm was one of the 15 or so persons who agreed to stop using the word "Dutch" after the denial of certiorari in this case (RB. 105-106).

"Dutch" in one form or another by General Paint. John B. Heinrich, respondents' counsel and secretary,

identified this as one of 15 various users of "Dutch" who agreed to stop using the word "Dutch" upon the denial of the original petition for certiorari in this case (RB. 105-106).

"Dutch" in one form or another by M & B Manufacturing Company. This is another of the 15 or so companies who stopped using the word "Dutch" after the denial of the writ (RB. 105-106).

"Dutch" in one form or another by Markell. This is another of the 15 or so companies who stopped using the word "Dutch" after the denial of the writ (RB. 105-106).

"Dutch" in one form or another by Jack Roy. This is another of the 15 or so companies who stopped using the word "Dutch" after the denial of the writ (RB. 105-106).

"Dutch" in one form or another by Tobias. This is another of the 15 or so companies who stopped using the word "Dutch" after the denial of the writ (RB. 105-106).

"Dutch Blend" by Twentieth Century Paint Company, New York. Respondent protested this use and negotiated an agreement whereby they abandoned the mark in 1949 (RA. 2368-2369).

"Dutch Blue" by Gillespie Varnish Company of Jersey City, New Jersey. Petitioner Wolfe identified a color card he'd had for about three years on the inside of which was listed their quick drying enamel with the designation "Dutch Blue" (Exhibit 126, RA. 527-529).

"Dutch Blue" by Pacific Paint and Varnish Company of San Francisco and Berkeley, California. Petitioner Wolfe also had a color card making this reference to the color 52,452 "Dutch Blue" (RA. 527-529, Exhibit 126).

"Dutch Blue" by Pervo Company of Los Angeles. Petitioner Wolfe had a color card three or more years old at the time of trial (RA. 527-529, Exhibit 126).

"Dutch Blue" by Edward Smith & Co., Inc., of New York, New York. Petitioner Wolfe also had a color card for this firm's "quick drying enamel" indicating the color "Dutch Blue" (RA. 528-529, Exhibit 126).

"Dutch Boy" by Selby Lead Company. A. Vernon Green, President of Tibbetts Corporation (RA. 357) identified this as an early use of "Dutch Boy" on white lead paste. He recollected this as a youngster (RA. 372-373).

"Dutch Brand" by The Core Lumber Company. This is another of the 15 concerns who stopped using the word "Dutch" after the denial of the earlier petition for the writ of certiorari (RB. 106).

"Dutch Brand" by The Perry & Derrick Co., Inc. of Cincinnati, Ohio. This concern, for a period commencing about twenty years ago and continuing to date, has employed a label bearing the notation "Dutch Brand" in the designation of paint sold by it (Request 33(a), and answer RA. 158-159). Exhibit 22 is a photostatic copy of the "Dutch Brand" label

employed by said concern (RA. 159). Ferdinand J. Derrick, president of this firm, testified as to this use (RA. 247-260). Exhibit 56 are samples of labels currently used by this firm (RA. 247-248). Exhibits 57 and 58 are newspaper advertisements (RA. 249-250). The dealers are located within the metropolitan Cincinnati area (RA. 251). Exhibit 59 is an invoice (RA. 252-253). The use of "Dutch Brand" on paints extended back to 1928 (RA. 253). The earlier labels were entirely different and featured "Dutch Brand" and the mill more prominently than the current labels (RA. 254). This firm's distribution was a radius of approximately 200 miles from Cincinnati (RA. 254). Exhibit D is a group of labels used on products other than the "Dutch Brand" house paint (RA. 256). Respondent's Cincinnati branch manager was personally aware of the "Dutch Brand" since 1930 (RA. 263-264). This firm is a customer of respondent, and respondent has had no complaints of confusion arising out of the "Dutch Brand" on paint (RA. 709-710).

"**Dutch Country**" by Benjamin Foster Company, Philadelphia, Pennsylvania. This concern employed a label bearing the words "Dutch Country" for paint manufactured and sold by it commencing in the year 1934 and continuing until the year 1942 when it discontinued the use of such label and such words (Request 46(a), RA. 172-173). Exhibit 36 is a photostatic copy of a folder employed by this concern (Request 46(b), RA. 173). This label was still listed in the 1947

directory but Charles Kaegebehn had information that this firm discontinued the use of that designation in about 1942 (RA. 886).

"Dutch Enamel" by Federal Paint Company, Inc., 33 Rector Street, New York, New York. This concern, commencing about the year 1925, and continuing to date, employed a label bearing the words "Dutch Enamel" to describe an enamel manufactured and sold by it under its trade-mark, Fedco (Request 31, RA. 150-151). Exhibit 18 is a photostatic copy of portions of an advertising folder used in sales promotions depicting a can with the "Dutch Enamel" label applied (Request 31(b), Exhibit 18, RA. 152). This concern sells its products, including "Dutch Enamel", principally in states east of the Rocky Mountains (Request 31(c), RA. 152). George H. Miles, Vice President of the company, testified as to the manufacture and sale of "Dutch Enamel" (RA. 235 et seq.). Exhibit 50 is an empty can with the name "Dutch Enamel" lithographed thereon (RA. 236-238). The words "Dutch Enamel" have been displayed on such cans substantially in that form and manner since 1925 (RA. 238). Exhibit 51 is a paper label used when the lithographed cans were scarce (RA. 238-239). Exhibit 52 is an advertising folder (RA. 240). "Dutch Enamel" is available not only in the United States, but to any prospective buyer (RA. 241). Pillsbury & Martignoni is the company's sales representative or dealer in San Francisco (RA. 241). "Fedco" is a principal trademark of the company (RA. 242). Exhibit B is a label used on smaller sized cans of "Dutch

Enamel" (RA. 243). Exhibit C is a sample color card (RA. 244-245). On Exhibit 50 "Dutch Enamel" appears on the top of the label, and Fedco appears in the center (RA. 704). Charles F. Kaegebehn was not aware of this use until the litigation (RA. 704-705). This company is a customer of National Lead Company (RA. 705).

"Dutch Kalsomine" by The Muralo Company of N. Brighton and Staten Island, New York. This firm listed "Dutch Kalsomine" for kalsomine on August 3, 1910 as appears from the 1912 Trademark Register (Request 16, RA. 99-100). The Court of Appeals for the District of Columbia dismissed respondent's opposition to the registration of this trademark on March 6, 1911 (Request 26(a), RA. 108-109). Respondent never brought an unfair competition action against this firm (Request 26(b), RA. 110). This firm, continuously since February 10, 1909, has employed the words "Dutch Kalsomine" to designate kalsomine in dry powder form (Request 26(c), RA. 110). This firm has advertised the "Dutch Kalsomine" as such in newspapers and trade paper publications and the product has been nationally distributed (Request 26(d), RA. 110-111). Trademark registration 86,725 was issued to this firm on May 28, 1912 (Exhibit 8, RA. 112-115). Alfred F. King, Jr., president of this firm, testified as to the current usage (RA. 204-219). Exhibit 43 is a sample carton (RA. 207). The product is sold nationally (RA. 208). The demand for kalsomine today is a fraction of what it was in the 1920's because casein paints such as Kemtone have now

come along (RA. 209-210). Exhibit 44 is a Dutch Kalsomine color chart (RA. 210-211). This firm has not pushed the product because it is a small fraction of its sales (RA. 212-213). Exhibit 45 is an advertisement from National Painters Magazine for August, 1950 in which Dutch Kalsomine is carried at the bottom of the advertisement and included among other trade products that are listed and manufactured by this firm (RA. 214). A. Vernon Green, President of Tibbett's Corporation (RA. 357), remembered "Old Dutch Kalsomine" made by The Muralo Company in New York as far back as along in 1907 (RA. 370). Charles William Blakiston, a paint and wallpaper merchant in San Francisco, (RA. 862), has known of the Muralo water paints since 1930 and carries "Dutch Kalsomine" in stock (RA. 867). Mr. Blakiston confirmed Mr. King's testimony that these casein type water paints have largely supplanted kalsomine and that kalsomine sales have dropped 75% in the last ten years (RA. 869).

"Dutch Kraft" by Grand Rapids Paint and Enamel Co. of Grand Rapids, Michigan. This firm employed a label bearing the words "Dutch Kraft" for paint which it sells but does not manufacture, commencing on or about October 26, 1928 and continuing to date (Request 36(a), RA. 162-163). Exhibits 25 and 26 are photostatic copies of "Dutch Kraft" labels (RA. 163). Exhibits 27, 28 and 29 are photostatic copies of cover pages of color charts used by this firm (Request 36(c), RA. 163-164). This firm obtained the registration of its "Dutch Kraft" mark on April

30, 1929 under No. 255,844 (Request 36(d), Exhibit 30, RA. 164). On June 10, 1947, registration 430,196 issued to this firm for "Dutch Kraft" mark (Request 36(e), RA. 164-165). Exhibit 136 is a "Dutch Kraft" label (RA. 554). Charles F. Kaegebehn's investigation disclosed that this "Dutch Kraft" name was used locally in Southeast Michigan, that it had been used there for quite a few years, and that as far as respondent could find out, it had not been sold much outside of that area (RA. 847).

"Dutch Lad" by Proctor Paint & Varnish. This is another of the 15 concerns who stopped using the word "Dutch" after the denial of the earlier petition for the writ of certiorari (RB. 106).

"Dutchland Enamel" by Packard Paint and Varnish Company of Cambridge, Massachusetts, commencing in or about June 1931 and continuing to date this firm employed a label bearing the word "Dutchland" for an enamel which it manufactured and sold (Request 38(a), not denied, RA. 166-167). Respondent associated this phrase descriptively with enamel and its investigation disclosed that it had been used for some years locally in New England (RA. 853-854).

"Dutch Maid" by S. Offerman, Inc., New York, New York. This firm registered the trademark "Dutch Maid" in the 1947 Trademark Directory for paints, shellacs and varnishes. Mr. Kaegebehn was unable to find such a product sold under that name (RA. 887) but no further testimony as to this use was presented.

"Dutch Masters" by Dutch Masters Paint and Varnish Co. of Brooklyn, New York. This concern, and its predecessor, Varnish Products Co., commencing on or about November 11, 1926, and continuing to date, employed labels on which appears the words "Dutch Masters" and an associated representation of the head and bust of a man for ready mixed paints and varnishes sold by it principally in New York City and its environs (Request 30, RA. 147-149). Exhibit 16 is a photostatic copy of two "Dutch Masters" labels. The mark "Dutch Masters" was registered in the Patent Office on October 4, 1927, as No. 233,524 (Request 30, RA. 150). Theodore Shapiro, a partner and one of the founders of the firm, testified that the mark was used on a full line of house paints, both interior and exterior, decorative enamels and construction specialties (RA. 225-226). Exhibit 47 is a "Dutch Masters" floor and deck enamel label; Exhibit 48 is a "Dutch Masters" decorative trim color label; Exhibit 49 is a "Dutch Masters" quality house paint label (RA. 228-229). These are current labels (RA. 229). The "Dutch Masters" products have a wide distribution in the metropolitan area of greater New York and along the Atlantic seaboard down to Florida and north to the New England states (RA. 231). The company advertised the "Dutch Masters" brand of paints in the press, outdoor signs, window displays and a limited amount of radio work (RA. 231). The company had a regular dealer in Portland, Maine, until he passed away a year ago (RA. 233). The company advertised in newspapers in Newark.

South Carolina, Miami, and local boroughs (RA. 233). Exhibit 132 is a "Dutch Masters" label (RA. 552). The company has been a customer of National Lead for over 20 years, but Charles F. Kaegebehn had no reports of confusion (RA. 707).

"**Dutch Mill**" by Standard Brands Paint Stores. Petitioner Bernard M. Wolfe obtained a label from a can of a pile of approximately 100 cans in a floor display at this firm's store in Los Angeles (RA. 537-538, Exhibit 127). Since approximately 1947 or 1948, Mr. Wolfe visited two stores in Fresno and Los Angeles (RA. 539-540). Walter J. Schulps, an outside sales representative for respondent (RA. 1972) saw this brand on sale at a Standard Brands store in Bakersfield in his territory (RA. 2017).

"**Dutch Mill**" by M. G. Stonemann & Son of Albany, New York. Commencing in or about the month of October 1934 and continuing to date, this firm employed a label bearing the words "Dutch Mill" for some paint sold by it (Request 37(a), not denied, RA. 165). Exhibit 32 is a copy of a sample of the "Dutch Mill" label employed by said concern (Request 37(b) and answer, RA. 165-166). Charles Kaegebehn went to see the owners of this business and noted that the firm sells paints and doesn't make them. This label was used on a second grade of this firm's paint. This firm also handled respondent's products under the "Dutch Boy" trade mark and the witness had no reports of confusion in the trade concerning this use (RA. 737-738). Respondent was first aware of this use in December 1949 (RA. 852-853).

"Dutch Process" by National Manufacturing Company and Hayes-Taylor of Tonawanda, New York. This mark is listed in the 1947 Trademark Directory and respondent's inquiry disclosed that they had not used the designation for years (RA. 889-890). Respondent offered no evidence as to the duration of this use.

"Dutch Standard" by Harrison Paint and Varnish Company of Canton, Ohio. Commencing on or about June 2, 1933 and continuing to date, this concern has employed labels bearing the words "Dutch Standard" in the designation of ready mixed paints, enamels and varnishes sold by it (Request 29(a), RA. 142). Exhibit 12 is a photostatic copy of a Dutch Standard label employed by this concern (Request 29(b), RA. 142-143). Exhibit 13 is a photostatic copy of a color chart employed by this concern in the promotion in the sales of Dutch Standard paint and enamels (Request 29(c), RA. 143). In the year 1947 the respondent protested the use by said concern of the figure of a boy in the traditional dress of Holland but made no protest against the continued use of the Dutch Standard brand (Request 29(b), RA. 143-144). This firm obtained registration No. 371,933 on October 17, 1939 in which it disclaimed the words "Dutch Standard" apart from the mark as shown (Request 29(e), Exhibit 15, RA. 145-147). Gordon G. Walter, president of the firm, testified as to this use (RA. 266-277). Dutch Standard is our first grade line of products and Harrison is our second line of products (RA. 267). Dutch Standard embraces a complete line of shelf

goods for house paints, enamels and varnishes (RA. 267). The concern used the Dutch Standard brand since 1933 (RA. 268). It first used Old Dutch but upon objection to the word "Old" by Sherwin-Williams as they had Old Dutch Enamel this concern dropped the word "Old" after 1936 (RA. 268). The Dutch Standard brand has been in constant use since the settlement with Sherwin (RA. 268). The concern operates in Ohio, Western New York, Western Pennsylvania, West Virginia, Kentucky, Indiana and Michigan (RA. 268). Exhibit 62 is the file wrapper of its trademark registration No. 371,933 (RA. 269-272). The company advertises in the American Paint and Oil Dealer and has newspaper advertising (RA. 274). The words "Dutch Standard" are given prominence in the advertisement of the Cincinnati Store (RA. 275). Exhibits 63-64 are pictures of the interior of the store showing that 9/10 of the material in the store features the Dutch Standard trademark (RA. 275-276). Andrew Chrien, secretary-treasurer of this firm also testified (RA. 277-292). Mr. Chrien's personal knowledge of the Dutch Standard brand goes back to May 11, 1934 when he was first employed by Mr. Walter as an individual (RA. 278). The brand has been used continuously (RA. 278-279). Exhibit 66 is an advertisement of this in the American Paint and Oil Dealer (RA. 280). Exhibit 68 is an advertising scrap-book (RA. 281). Exhibit 69 is a photograph of an electric sign exhibiting the Dutch Standard name (RA. 282-283). Exhibit 70 is one of 48 different labels produced by Mr. Chrien (RA. 284-285). Exhibit

71 is a Dutch Standard red lead label (RA. 285). Exhibit 72 is a Dutch Standard varnish label (RA. 286). Exhibit 73 is a Dutch Standard label for an implemental paint (RA. 280). The name Harrison is also prominently displayed (RA. 287). Mr. Chrien identified 4 advertisements which did not bear the name Dutch Standard (Exhibit E, RA. 288-289). Exhibit F is a Wood-Nu label (RA. 290). Exhibit 69 is a photograph of a sign, Skinner and Skinner, New Kensington, Philadelphia (RA. 290). Exhibits 70-73 were started in 1938 and were manufactured by the Fuller Label and Box Company, Pittsburg (RA. 291). Previous to that time local printing firms made up the labels (RA. 291). Charles F. Kaegebehn was aware of no confusion arising out of this label and had been aware of the use for 2 or 3 years (RA. 711). Mr. Kaegebehn identified correspondence (Exhibits 140-141-142, RA 711-719). Up to November 14, 1950, respondent did not protest the use of "Dutch" by this firm (RA. 719-720). This firm was not requested to give up nor did it give up the use of the word "Dutch" in the phrase "Dutch Standard" (RA. 917-918). However on the denial of certiorari this firm became one of 15 people who agreed to stop using the word "Dutch" (RB. 105-106).

"Dutch Stand Oil" by Louisville Varnish Works, Louisville, Kentucky. This mark is included in the 1947 edition of the Trademark Register. Respondent was informed that the mark was discontinued, that it has been used on linseed oil, that the designation was stencilled on the barrels and it was sort of a specialty

item. It was not in use in November, 1950 (RA. 895). Respondent offered no further evidence as to this use.

"Dutch Style" by Chicago White Lead and Paint Manufacturing Co., Chicago, Illinois (Hooker Glass and Paint Manufacturing Co., successors). This concern employed a label bearing the words "Dutch Style" on an enamel manufactured by it and sold in and around Chicago under the trade mark "Amsterdam". This concern employed said label for about 10 years ending in the year 1930 (RA. 173-174). Exhibit 37 is a photostatic copy of the label (RA. 175). Exhibit 129 is the label removed from a paint can (RA. 550). This label was discontinued many years ago (RA. 893-894).

"Dutch type enamel" by The Glidden Company. Daniel D. Roberts, a branch manager of respondent, knew of this product back in the early thirties, which would be approximately 1930 to 1940 (RA. 1634-1635).

"Dutch White" by The Billings-Chapin Co., Cleveland, Ohio. This trade name was listed in the 1912 edition of trade names registered with the National Paint, Oil and Varnish Association as of April 11, 1906 (RA. 99-100). It was still listed in the 1947 directory (RA. 890). This company was taken over by The Glidden Company, and the "Dutch White" name was no longer being used in 1950 (RA. 891).

"Dutch White" by the Reardon Company. Petitioner Wolfe produced a color card of this firm listing "Dutch White" as color No. 118 under "Bondex Cement Paint" (RA. 528-529, Exhibit 126). Petitioner

Wolfe observed this color card at a retail paint store in San Francisco within three weeks prior to the trial (RA. 529-530).

"Dutch White" by Tibbetts Corporation, Los Angeles, California. A. Vernon Green, president of this firm, testified as to this use (RA. 357-380). This firm used the expression "Gloss Finish Dutch White" on three different tester paints and the designation "Dutch White" on a particular shade of white on its "Colored Sunshine" card (RA. 367). Exhibit 98 is a label (RA. 367). Charles F. Faye, a hardware merchant in Los Angeles (RA. 1308) handled respondent's paint (RA. 1309) and Tibbetts' paint (RA. 1318). He stocks the "Gloss Finish Dutch White" paint referred to in Exhibit 97 (RA. 1319).

"Holland Dutch" by Pervo Paint Company of Los Angeles. This company for a period of time commencing in approximately 1923 and continuing to date has employed a label bearing the words "Holland Dutch" to describe a waterproof paint sold by it (Request 32(a); not denied, RA. 155). Respondent was informed and believed that the use began about 1927 or 1928 (RA. 156). Exhibit 19 is a photostatic copy of the "Holland Dutch" waterproof paint label (Request 32(b), RA. 156-157). Exhibit 20 is a color chart at one time employed by said concern (RA. 157). Exhibit 21 is a paint folder (RA. 157). This company and respondent had a conflict in the Patent Office, and respondent did not require this company to discontinue the words "Holland Dutch" to describe waterproof paint (RA. 157-158). Exhibit 133 is a Pervo Holland Dutch label (RA. 553). Respondent

had no evidence of confusion in connection with Pervo's use of Holland Dutch, and its use is current on waterproof stucco paint (RA. 728). Walter J. Schulps, a salesman for respondent (RA. 1972) had seen this label in Bakersfield, Taft and Oilville, a suburb of Bakersfield (RA. 2015). Charles W. Collins, another salesman for respondent (RA. 2049-2050) had been employed by Pervo Company and sold "Holland Dutch" paint in Utah, western Wyoming and eastern Idaho (RA. 2118-2119). This firm used an old Holland Dutch process of making stucco paint that was brought over from Holland (RA. 2183).

"Neu-Dutch" by Superior Paint and Varnish Corporation, Chicago, and Paint Exchange of Chicago. "Neu-Dutch" was listed in the 1947 Trade Mark directory for enamel by Paint Exchange of Chicago (Request 20, RA. 102). About 15 years prior to the trial and continuing to date, Superior employed a label bearing the trade style "Neu-Dutch Enamel Co." and the words "Neu-Dutch" for enamels sold by it (Request 35(a) not denied, RA. 161). Exhibit 24 is a copy of a label employed by this firm for one of its products (Request 35(b), RA. 161-162). Justin D. Goldman, President of this firm, testified as to this use (RA. 302-312). This firm started as a partnership in 1930 and engaged in the manufacture of paints and sundry items. It also ran retail stores under the name of "Paint Exchange of Chicago." This firm still had two stores at the time of the deposition (RA. 303). Exhibit 79 and 80 are "Neu-Dutch" labels used by this firm (RA. 304-305). They were presently used and had been used since 1937 (RA. 305). The firm ceased

operating in Kenosha, Wisconsin in 1940 or 1941 (RA. 305). "Neu-Dutch Enamel Company" is the same as this firm (RA. 306). Exhibit 81 is a catalog of the firm put out in 1949 (RA. 307-308). Exhibit 82 is a price list (RA. 309). These labels are only a small part of this firm's business and that has been true since the company first started to make the products (RA. 311). Respondent had no evidence of confusion arising from this mark (RA. 734-735).

"Nu-Dutch" by Schorn Paint Manufacturing Company of Seattle. Petitioners objected to the use of this mark by this concern on August 9, 1948 (RA. 676-680). Exhibit X is a "Nu-Dutch" label offered in evidence by respondent (RA. 680).

"Old Colony Dutch" by some unspecified manufacturer. This is another of the 15 people who stopped using the word "Dutch" upon the denial of the original petition for certiorari in this case (RB. 105-106).

"Old Dutch" by Detroit White Lead Works. This name was listed as of February 15, 1911, for ready mixed paints in the 1912 edition of trade named registered with the National Paint, Oil and Varnish Association (RA. 98). Respondent offered no evidence indicating non use of this mark or a cessation of use of this mark.

"Old Dutch" by Harrison Bros & Co. of Chicago. On December 23, 1897, this firm listed "Old Dutch" for prepared white paint as appears from the 1912 trademark directory (Request 14, RA. 98). Respondent offered no evidence as to the non use or cessation or use of this mark.

"Old Dutch" by W. W. Lawrence & Co. This firm listed the trade name "Old Dutch" for prepared white paint on March 4, 1898 as appears from the 1912 Trademark Register (Request 14, RA. 98). Respondent was unable to locate this company at the time of trial (RA. 891-892) but offered no evidence as to non use of the mark or as to the duration of use.

"Old Dutch" by Old Dutch Process Manufacturing Co., Brooklyn, New York. Commencing on or about January, 1936, this firm employed a label bearing the words "Old Dutch" and the representation of a Dutch boy's head on furniture polish, liquid wax, automobile polish, ready-mixed paint and prepared shellac (Request 28(a) not denied, RA. 140). On January 25, 1939 United States Trademark Registration 353,909 was issued (Request 28(c), RA. 140-142, Exhibit 11). Respondent was unable to locate this firm at the time of trial (RA. 888-889).

"Old Dutch" by F. O. Pierce Company, New York. This company listed "Old Dutch" for base white on May 21, 1908 as appears from the 1912 Trademark Directory (Request 14, RA. 99). Respondent's information is that the use of that expression was discontinued in about 1942 or 1943 (RA. 893).

"Old Dutch" by Uhl Bros., Inc. of Los Angeles and San Francisco, California. Commencing at least as early as 1935 and continuing to the date of the trial, this firm employed a label bearing the words "Old Dutch" for paints, enamels and paint products sold by it (Request 42(a) not denied, RA. 169). This firm for a number of years maintained sales facilities for said "Old Dutch" goods in Los Angeles, San Fran-

cisco and Oakland, California; Seattle, Washington and Portland, Oregon (Request 42(b) not denied, RA. 169-170). This concern advertised its "Old Dutch" goods in the newspaper and other media common to the trade (Request 42(c) not denied, RA. 170). Exhibit 35 is a sample of the "Old Dutch" label employed by said concern (RA. 170). George Uhl, President of this firm, testified as to this use (RA. 312-332). This firm incorporated in 1896 with its principal place of business at Oakland (RA. 315). It continued in Oakland up to five years ago and still maintains a store in San Francisco. Its main office now is in Los Angeles (RA. 315). This firm has used the "Old Dutch" label for some time, between twenty and twenty-five years (RA. 317). This firm bought some of its paints from respondent and from respondent's predecessor Bass-Heuter (RA. 317-318). Exhibits 84-87 are "Old Dutch" labels used on cans sold to this firm by respondent (RA. 319-320). These labels are currently being used by this firm (RA. 320). The "Old Dutch" name on the labels is the same as that which was originally used except the original labels merely read "Uhl Bros." instead of "Delco Paint and Varnish Works" (RA. 320-321). Exhibit 88 is a color chart used by Uhl Bros. (RA. 321). The firm used newspaper and direct mail advertising (RA. 322). The "Old Dutch" brand manufactured by this firm was sold in California, Oregon, Washington, Utah and Arizona (RA. 322). The company has a number of other brands (RA. 322-325, Exhibit G). "Old Dutch" is a house paint (RA. 332). Nancy Diven, secretary and bookkeeper of this firm, also testified (RA. 332-

341). She confirmed "Old Dutch Gloss Enamel" (RA. 333); the "Old Dutch Undercoat" label; the "Old Dutch" L.Z.T. and the "Old Dutch Pure Paint" (RA. 334). She also confirmed that the color chart on "Old Dutch Pure Paint" was originally distributed through the mail. The most popular label was "Old Dutch Pure Paint" (RA. 335). The company advertised in newspapers and direct mail (RA. 336-337). Aubrey B. Chambers testified as to the labels (RA. 341-357). Mr. Chambers printed labels for this firm and recalled printing the labels in evidence for a period of ten years (RA. 343-344). He had no knowledge of the earlier labels (RA. 344). William S. Dahlem, a partner in the Security Paint Manufacturing Company, worked for Uhl Bros., Inc. over 25 years ago. Among other paints that concerned sold "Old Dutch House Paint, Old Dutch Enamel, Old Dutch Satin Gloss Enamel, Old Dutch Spar Varnish, Old Dutch Flat White" (RA. 383). Mr. Dahlem further identified the "Old Dutch" labels (RA. 383-384). James Lewis Tattersall, another partner with Security Paint Manufacturing Company (RA. 408) worked for Uhl Bros. from 1920-1944 (RA. 409). He sold "Old Dutch Lead and Zinc, Old Dutch White Paint, Old Dutch Undercoat, Old Dutch Flat Coater, Old Dutch Spar Varnish and Old Dutch Enamel" throughout the period of his employment by Uhl (RA. 409). He identified the color chart (RA. 410). He referred to window displays, Exhibits 105, 106 and 107 (RA. 410-411). He identified other brand names used by this firm (RA. 413-418). James Gray was employed by Uhl Bros. from September 7, 1907 to the present time (RA. 419-420). To his

own knowledge the San Francisco stores sold "Old Dutch" paints from the time he started work (RA. 422-423). He confirmed the Uhl Bros. labels (RA. 423-424). Exhibits 110 and 111 are pictures of the San Francisco store showing the "Old Dutch" paints in pyramids (RA. 426-427). The "Old Dutch" brand of paints was advertised in the San Francisco Examiner (Exhibits 112 and 113, RA. 427-430). When Mr. Gray started working for this firm, Bass-Heuter, a predecessor of respondent, made its paints (RA. 430). The "Old Dutch" labels and stencils were applied at the San Francisco store (RA. 433). The San Francisco store sells the other Uhl Bros. paints (RA. 436). The sales now average about 50 gallons a month in the San Francisco store and it ships an avgrage of 100 gallons a month (RA. 438-439). Charles William Blakiston, a paint and wallpaper merchant (RA. 862) sold "Old Dutch" in the early days when he was on the road (RA. 870). Charles F. Fay, a hardware merchant in Los Angeles (RA. 1308) recalled the Uhl Bros. "Old Dutch" brand (RA. 1323). He had personally known of this firm since 1929 (RA. 1349). Daniel D. Roberts, the Pacific Coast branch manager of respondent (RA. 1556) had heard of Uhl Bros. use of "Old Dutch" about 1935 and saw the label in Portland (RA. 1627-1628). Respondent had no instance of confusion concerning this brand (RA. 744-745).

"Old Dutch Enamel" by the Sherwin-Williams Company of Cleveland, Ohio. For a period commencing on or about March 20, 1912 and extending until sometime during World War II, this firm employed the words "Old Dutch Enamel" on an enamel sold

by it. (Request 27(a) not denied by respondent, RA. 118-119). Exhibit 9 is a copy of a label used by this firm (Request 27(b), RA. 137-138). Exhibit 10 is trademark Registration 164,193 granted February 23, 1923, under the Act of March 19, 1920 (Request 27(c) and answer, RA. 138-139). This firm relied upon this label in negotiating the agreement whereby Perry & Derrick changed its label from "Old Dutch Standard" to "Dutch Standard" sometime after 1936 (RA. 268). Respondent negotiated a termination of this firm's use of the expression "Old Dutch Enamel" in about 1942 (RA. 724) during the course of which this firm "said that they were not too concerned about continuing it, that the product was going out—it was a formula made according to the classic Dutch formula for enamels, and it was being superseded by newer materials." (RA. 726). Respondent had no reports concerning confusion of trade (RA. 727). Daniel D. Roberts, branch manager of respondent's Pacific Coast Branch (RA. 1556) recalled Sherwin-Williams' use of the expression "Old Dutch Enamel" (RA. 1628). Mr. Roberts had no occasion to report any instances of confusion because respondent considered that descriptive of the type of product (RA. 1632-1634).

"**Old Dutch Process**" by W. P. Fuller and Company, San Francisco, California. This firm used the word "Dutch" to describe the method by which its Pioneer White Lead was manufactured (Request 24 (a), RA. 107). J. Langer Root, the vice-president of this firm, testified as to this use (RA. 775-787). Exhibit 145 is a keg which this firm used for Pioneer

White Lead until 1949 (RA. 777). The reference "made by the Old Dutch Process" appears on the keg under the "Pioneer White Lead" and the picture of a pioneer (RA. 777). Exhibit 146 is a label used on a one pound can which was used until 1949 when the process was changed (RA. 778). This label contains the reference "Made by the Old Dutch Process of slow corrosion which insures maximum covering and hiding properties." (RA. 779). Exhibit 147 is a catalogue published in the year 1905 which has the picture of the keg and says "manufactured by the Old Dutch Process" (RA. 780-781). "Dutch Process" describes a method of making white lead (RA. 783). Mr. Root described the "Old Dutch" process (RA. 784). The notation "made by the Old Dutch Process of slow corrosion," is descriptive of the method by which this white lead is made (RA. 785). This firm discontinued to use the Old Dutch Process to make white lead in 1949 (RA. 785). The Dutch process costs too much money (RA. 786). This firm was one of the last to discontinue the Old Dutch Process (RA. 786).

"Old Dutch White Enamel" by Seidlitz Paint and Varnish Company. This firm adopted the notation "Old Dutch White Enamel" for a white enamel some 15 or 20 years ago and used it for approximately one year in and around Kansas City, Missouri (Request 45, RA. 171-172). Respondent obtained information from young Mr. Seidlitz that they haven't used it for 15 years (RA. 893).

"Royal Dutch" by Security Paint Manufacturing Company of Los Angeles (RA. 175). This firm employed a label bearing the words "Royal Dutch" for

paints which it manufactured (RA. 175). Exhibit 38 is a label used by this firm (RA. 176). William S. Dahlem, a partner in the firm, testified as to this use (RA. 380 et seq.). Exhibit 102 is a group of "Royal Dutch" labels (RA. 385-386). This label was used on a large number of products identified in the record (RA. 386). This label was adopted prior to 1945 (RA. 387). The company uses direct mail circulars (RA. 388). Respondent sent this firm a letter of infringement on January 17, 1950 (Exhibit K, RA. 401). Correspondence was exchanged (RA. 405, Exhibits L and M). Charles F. Kaegebehn referred to the notice of infringement (RA. 701-702). Walter J. Schulps, an outside salesman for respondent (RA. 1972) had seen "Royal Dutch" at his dealer's places in Bakersfield, Delano and Visalia (RA. 2015-2016).

"Royal Dutch" by Tibbetts Corporation, Los Angeles, California. A. Vernon Green, President of this firm, testified as to this use (RA. 357-380). Exhibit 92 is a "Royal Dutch" label employed by this firm since 1936 and bearing the trade name "Royal Dutch Paint Co.," a trade style employed by this firm (R.A. 362-363). This is the firm's lowest priced paint (RA. 363). This label is applied to outside white ready mixed paint, to an inside white, to an inside enamel, to an enamel undercoater and to approximately six colors in an outside ready mixed paint (RA. 369). This label represents a small volume of this firm's paint sales and this label is not advertised (RA. 378). Respondent had no evidence of confusion arising out of this label (RA. 745). This label is listed in the 1947 Trade Mark Directory (RA. 894).

Appendix C

Excerpts from Webster's New International Dictionary, Second Edition, Copyright 1941.

Dutch blue. 1. = Dutch Beech.

2. A color, blue in hue, of low saturation and medium brilliance. It is of higher brilliance than cadet.

Dutch orange. A color, red-yellow in hue, of high saturation and high brilliance. Called also *Florida gold, orpiment red, yellow carmine.*

Dutch pink. a = Yellowweed e. b A yellow lake prepared from fustic or Persian berries with alum and whiting, and used in distemper painting, for paper staining, etc. c A color, reddish-yellow in hue, of medium saturation and very high brilliance. Called also *English pink, Italian pink, stil-de-grain yellow, yellow madder.*

Dutch process. See white lead.

Dutch scarlet. = Castilian red.

Dutch vermilion. See vermilion, n., 3.

Dutch white. A pigment consisting of one part of white lead to three of permanent white.

White lead. a A heavy, white, poisonous powder consisting of basic lead carbonate, usually having the composition $2\,PbCO_3.Pb(OH)_2$, and forming a most important pigment; ceruse; also the paste formed by grinding it with oil *(white lead in oil).* In three important processes of manufacturing

white lead, metallic lead is exposed to the action of acetic acid, moisture, and carbon dioxide. Most used is the old *Dutch,* or *stack, process,* in which lead gratings or plates are placed in the upper part of pots containing the dilute acid, and the pots are stacked in fermenting tanbark or manure and left for about three months. * * *

Vermilion * * * 3. Hence, a red color like the pigment; a lively and brilliant red; as, cheeks of *vermilion.* Specific colors are: *French vermilion,* called also *paprika,* a yellowish-red color of very high saturation and medium brilliance; *Dutch vermilion,* a color slightly yellower than cherry * * *

Appendix D

DOLLAR VALUATION OF U. S. IMPORTS OF PIGMENTS, PAINTS AND VARNISHES FROM THE NETHERLANDS, 1902-58[1]

	Pigments	Paints	Varnishes	Total PP&V	Linseed Oil	Total PPVal
1902[2]	$ 4,738		$ 56	$ 4,794		$ 4,79
	9,081		35	9,116		9,11
	13,224		48	13,272		13,27
1905	35,765		143	35,908		35,90
	28,448		220	28,668		28,66
	44,442			44,442		44,44
	36,554		251	36,805		36,80
	44,474		10	44,484		44,48
1910	52,340		117	52,457		52,45
	60,619			60,619		60,61
	53,423			53,423	$ 247,025	300,44
	50,719			50,719	26,903	77,62
	58,296			58,296	3,548	61,84
1915	209,886			209,886	9,271	219,15
	423,488			423,488	4,208	427,69
	192,215			192,215	9	192,22
1918[3]						
	117,613			117,613	82,036	199,64
1920	378,600			378,600	844,181	1,222,78
	187,608			187,608	1,036,792	1,224,40
	507,537	$ 8,575		516,112	3,576,179	4,092,29
	437,551	31,268	505	469,324	906,323	1,375,64
	384,741	43,381	72	428,194	198,436	626,63
1925	419,940	42,147	515	462,602	602,767	1,065,36
	537,570	56,527	495	594,592	771,324	1,365,91
	583,511	70,344	265	654,120	65,205	719,32
	696,701	64,201	817	761,719	9,341	771,06
	594,730	88,440	2,996	686,166	166,806	852,97
1930	552,218	63,968	4,943	621,129	78,638	699,76
	502,037	41,694	8,888	552,619	9,537	562,15
	210,675	50,996	3,103	264,774	212	264,98
	356,775	247,416	12,170	616,361	303,030	919,39
	304,812	104,052	927	407,857[4]	103,058	510,91
1935	363,248	35,385	1,103	399,736	79,417	479,15
	249,775	66,318	1,197	317,290	264,438	581,72
	478,317	30,350	1,379	510,046	19,737	529,78
	313,393	32,138	1,147	346,678	4,822	351,50
	165,121	30,128	1,775	197,024	1,254	198,27

Not Available

	Pigments	Paints	Varnishes	Total PP&V	Linseed Oil	Total PPV&L
1940	3,146	11,875	653	15,674	18	15,692
	.....	.....	.....	.....	318	318
	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....
1945	.....	.....	.....	.....	.....	.....
	554	4,732	.....	5,286	.....	5,286
	.....	3,807	.....	3,807	1,455,037	1,458,844
	.....	4,983	321	5,304	.....	5,304
	4,447	3,970	1,166	9,833	.....	9,833
1950	55,746	10,407	1,987	68,140[5]	.....	68,140
	62,936	7,514	17,933	88,383	.....	88,383
	9,942	8,709	10,516	29,167	.....	29,167
	133,727	8,554	3,938	146,219	.....	146,219
	238,339	5,404	3,960	247,703	.....	247,703
1955	203,947	4,974	2,829	211,750	.....	211,750
	156,104	5,942	2,352	164,398	.....	164,398
	239,904	7,415	1,370	248,689	.....	248,689
	569,556	7,920	4,058	581,534	.....	581,534

[1]Sources:

1902-46, Foreign Commerce and Navigation of the United States, 1902 issued by Bureau of Statistics (Treasury Dept.); 1903-10 by Bureau of Statistics (Dept. of Commerce and Labor), and 1911-40 by Bureau of Foreign and Domestic Commerce; 1941-46 by Bureau of Census (Dept. of Commerce).

1947-58, Reports Nos. FT 110 and 120, U.S. Imports of Merchandise for Consumption, Dept. of Commerce, Bureau of Census.

[2]1902-17, Pigments and paints were listed together as Pigments, Paints and Colors.

[3]July 1-Dec. 31, 1918. 1902-17 are fiscal years. 1919 to date are calendar years. Rev. Stat., Sec. 336, Jan. 25, 1919.

[4]Total of separately listed pigments, paints, varnishes and related products. Source gives total of $409,791.

[5]Total pigments, paints and varnishes from FT 110. FT 120 gives total as $68,026.